

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pasadena Neighborhood Coalition,

Complainant,

vs.

Altrio Communications, Inc.,

Defendant.

Case 02-11-053
(Filed November 19, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING PETITION TO SET ASIDE SUBMISSION**

Background

The evidentiary hearing (EH) in this proceeding, initiated by the complaint of the Pasadena Neighborhood Coalition (Coalition) that defendant Altrio Communications, Inc. (Altrio) is in violation of the requirements of Decision (D.) 01-07-022, was held June 3 – 4, 2003. Opening and responsive briefs were filed and the matter was submitted on July 10, 2003. On July 31, 2003, Altrio filed a Petition to Set Aside Submission and Reopen the Proceeding for the Taking of Additional Evidence & Supplementary Briefing (Petition).

Discussion

The Petition requests that the Commission reopen this proceeding pursuant to Rule 84 of the Commission's Rules of Practice and Procedure¹ in order to take official notice of certain documents pursuant to Rule 73. Because the EH has been concluded but this matter has not yet been decided, the petition may be entertained.

Altrio proffers Petitioner's Notice of Motion to Supplement Administrative Record, Memorandum of Points and Authorities in Support and Request for Judicial Notice, with Exhibit C, filed July 14, 2003 in the action *Robert P. Kneisel v. City of Pasadena*, BS079863 (Los Angeles Superior Court).² Altrio points out that these documents were not available prior to the July 10, 2003 submission date of this proceeding and argues that it is appropriate to set aside the submission to receive them and take official notice of them.

Altrio's request focuses on the exhibit, a list of frequently asked questions about Altrio's installations in the City of Pasadena (City) and answers to them, prepared for the City Council by the office of the City Manager, dated December 2, 2002 (FAQ). Altrio advances two reasons to set aside the submission: that the FAQ shows "what the City believes about many of Mr. Kneisel's claims" and that some of the information in the FAQ should have been submitted in this proceeding by the Coalition.

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

² Mr. Kneisel was one of the witnesses for the Coalition in this proceeding.

Neither reason supports setting aside the submission in this proceeding to receive the documents from the Superior Court case. The City is not a party to this proceeding. Statements made by its staff in a document prepared for a City Council meeting would be, at best, of only marginal value to the record in this proceeding. Altrio also fails to explain why the City's beliefs are a proper subject of official notice under Rule 73, which confines the Commission's power to take official notice to matters that may be judicially noticed by the California courts. See Evid. Code §§ 451-53. Altrio's claim that the Coalition should have submitted some of the information in the FAQ in this proceeding is likewise not persuasive. No party to this proceeding was required to represent the views of the City, a non-party. In effect, Altrio is seeking the admission of the FAQ in order to impeach Mr. Kneisel's credibility. The FAQ, however, addresses matters that are merely collateral, if not irrelevant, in this proceeding. These matters are not significant enough to justify setting aside the submission, even if the proffered documents were properly subject to official notice.

Finally, Altrio's request to set aside the submission to admit a document from the Superior Court case for impeachment purposes could easily lead to a cascade of requests from both parties to admit still more documents from that litigation, assertedly to counter documents presented by the other party. Altrio has failed to demonstrate that the proffered documents are sufficiently valuable to the record in this proceeding as to be worth the risk of having the record inundated with documents from the Superior Court case.

IT IS RULED that:

1. The petition of Altrio Communications, Inc. (Altrio) to set aside the submission in this matter is denied.

2. Altrio's request to take official notice of documents from the action, *Robert P. Kneisel v. City of Pasadena*, BS079863 (Los Angeles Superior Court), is denied as moot.

Dated August 8, 2003, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Petition to Set Aside Submission on all parties of record in this proceeding or their attorneys of record.

Dated August 8, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.